

REPORT OF THE EXECUTIVE OFFICER  
State Allocation Board Meeting, October 25, 2006

REPAYMENT SCHEDULE FOR AMOUNTS DUE TO THE STATE

PURPOSE OF REPORT

To request:

1. Adoption of amendments to the School Facility Program (SFP) regulations to establish criteria for repaying amounts due to the State.
2. Authorization to file the proposed regulations on an emergency basis with the Office of Administrative Law (OAL).

DESCRIPTION

AB 1200, Chapter 1213, Statutes of 1991, specified that each school district's budget must address its ability to meet its financial commitments and demonstrate fiscal solvency and accountability. In view of this, the State has set minimum funding reserves that are monitored by county offices of education (COE). These district reserves are generally used as a barometer of a given district's fiscal solvency. Occasionally, districts that are not maintaining appropriate funding reserves and are unable to meet their short-term financial obligations are placed on a list maintained by the California Department of Education (CDE).

On occasion, a district may owe the State an amount that could cause financial distress and becoming subject to the requirements of AB 1200. Ultimately, districts that fall under the AB 1200 provisions may be placed on the CDE List of Negative and Qualified Certifications. Consequently, specific districts have requested that they be allowed to repay the amounts due over a longer period of time rather than a one-time lump sum payment or deduction from their school fund apportionment.

In May 2006, Staff presented emergency regulatory amendments to the State Allocation Board (SAB) that established criteria for repaying amounts due to the State. However, the OAL was unable to approve the proposed amendments without changes to current law. In September 2006, the Governor signed into law Assembly Bill (AB) 607, Chapter 704, Statutes of 2006, which will be effective January 1, 2007 and will provide the SAB the authority to establish repayment plans of up to five years for those school districts that are in severe financial distress.

AUTHORITY

Education Code (EC) Section 17076.10(c) authorizes the Office of Public School Construction (OPSC) to initiate collection procedures if a school district fails to make the required payment within 60 days. The OPSC shall notify the Controller and the school district in writing, and the Controller shall deduct an amount equal to the amount received by the school district from the school district's next principal apportionment or apportionments of state funds to the school district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution.

AB 607, Chapter 704, Statutes of 2006, requires the SAB to approve a plan of equal annual payments, with interest, over a period of up to five years if the Board determines that repayment of the full liability within sixty days after the board's action would constitute a severe financial hardship, as defined by the board, for the school district. This bill would require the Controller to withhold certain amounts pursuant to the repayment plan.

AUTHORITY (cont.)

EC Section 17070.51(b)(1) authorizes the Board to approve a repayment schedule of no more than five years when the Board makes a finding that a material inaccuracy occurred. The school district shall repay to the Board an amount proportionate to the additional funding received as a result of the material inaccuracy including interest at the rate paid on moneys in the Pooled Money Investment Account, or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater.

AB 1200, Chapter 1213, provides fiscal oversight responsibilities to COE's and mandates that all school districts maintain a special reserve account that has a minimum balance of three percent of their General Fund for future economic uncertainties. Districts that fail to maintain this amount may be placed on a CDE List of Negative and Qualified Certifications list.

STAFF COMMENTS

Absent a material inaccuracy finding from the SAB, there is currently no regulation addressing the SFP repayment of amounts due to the State over a period of time. It is not the objective of Staff to cause school districts to experience financial insolvency due to a financial close-out audit; therefore, regulations need to be established to allow school districts to repay refunds due to the State over a period of time, under specific circumstances to lessen the financial repayment burden.

Staff believes that in certain situations where school districts are in financial distress, or currently in financial hardship, the school districts should be afforded a repayment schedule of up to five years in lieu of a lump sum payment. The passage of AB 607 provides authorization to facilitate flexible repayment schedules that do not place the school districts in imminent financial harm. If the school district is unable to make the scheduled payment, the district will be subject to collection procedures.

There are currently several school districts that owe substantial sums of money to the State that will potentially invoke the provisions of AB 1200 if the amounts due are repaid in one lump sum payment. Also, these school districts do not fall under the material inaccuracy provisions that would provide for a longer repayment period. Staff is recommending that the proposed regulations be adopted to alleviate the potential for these school districts being placed on a fiscal watch list thereby hindering the districts ability to provide necessary facilities to all their students.

RECOMMENDATIONS

1. Adopt the proposed regulations as shown on the Attachment and begin the regulatory process.
2. Authorize the OPSC to file these regulations on an emergency basis with the OAL.

This Item was approved by the State Allocation Board on October 25, 2006.

## ATTACHMENT

### PROPOSED AMENDMENTS TO THE SCHOOL FACILITY PROGRAM REGULATIONS State Allocation Board Meeting, October 25, 2006

Amend Section 1859.106 as follows:

Section 1859.106. Program Accountability Expenditure Audit.

...

Should the OPSC conduct an audit of the district certifications or the expenditures for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint-Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, and Education Code Sections 17072.13 and 17072.14 for projects with additional costs imposed by the DTSC, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. ~~Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).~~

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251(b) and (c) when the district had self-certified that the project met those standards pursuant to Education Code Section 17070.50(b), the Board may request that the CDE make a recommendation that the apportionment for the project be adjusted based on the CDE finding. Any adjustment in the apportionment shall be based on the percentage of space in the project that the CDE determined did not meet those standards. ~~Upon adoption of the finding by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).~~

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17070.50, 17072.13, 17072.14, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251, Education Code.

Adopt Regulation Section 1859.106.1 as follows:

Section 1859.106.1. Repayment of State Funds.

Upon adoption of the audit findings by the Board and in lieu of the collection procedures outlined in Education Code Section 17076.10(c), a district may request a repayment schedule of up to five years, in equal annual installments, if the total repayment of State funds within 60 days of the Board action could cause the district to fall into fiscal distress. Districts requesting a repayment schedule must be in a severe hardship condition as evidenced by at least one of the following criteria:

- (a) The district is listed on the current CDE List of Negative or Qualified Certifications of School Districts and County Offices of Education.
- (b) The amount due to the State for one or more projects would cause the district to be listed on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education current report. The COE must submit both of the following documents to the OPSC on behalf of the district for consideration:
  - (1) A letter substantiating that the repayment will place the district on the CDE list.
  - (2) A CDE certification of negative financial condition.

The repayment schedule shall include interest at the same rate as that charged by the Pooled Money Investment Board on the date a repayment schedule is approved by the Board.

The repayment schedule will commence on July 1 of the fiscal year following the repayment schedule approval date.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35 and 17076.10(c)(2), Education Code.